IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 18TH AUGUST 2006 / 27TH SRAVANA 1928

Bail Appl..No. 4455 of 2006

CMP.2115/2006 of J.M.F.C.,AMBALAPUZHA
CRIME NO. 21/2006 OF KUTTANAD EXCISE RANGE

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PETITIONERS/ACCUSED

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1. REJIMON, S/O. VARGHESE,
   AGED 33 YEARS, KANAKALIVEEDU,
   PUTHAKUZHUKARA MURI, PAMBADY VILLAGE,
   KOTTAYAM TALUK.

2. RADHAKRISHNAN NAIR @ NARAYANAN,
   S/O. GOPINATHAN NAIR,
   MURALEEBHAVANAM, THALAYAR MURI,
   KUTTOOR VILLAGE, THIRUVALLA TALUK.

BY ADV. SMT.GIRIJA.L.
SMT.C.G.PREETHA

RESPONDENTS: COMPLAINANT/STATE

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR K. RAVIKUMAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18/08/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M.JAMES, J.

B.A. 4455/2006

DATED THIS THE 18TH DAY OF AUGUST, 2006

O R D E R

The petitioners are accused 2 and 3, in C.R.No.21/2006 of Kuttanad Excise Range, for the offence punishable under Sections 55(a) and 67B of the Abkari Act, as they were found in illegal possession of 105 liters of spirit, on 18.6.2006. The petitioners are in judicial custody, from that day onwards. Hence this application, under section 439 Cr.P.C.

2. After hearing both sides and considering the duration of the judicial detention, I grant bail and release the petitioners from jail subject to the following condition:-

> Each petitioner shall execute a bond for Rs.25,000/-, with two solvent sureties, each for the like sum, to the satisfaction of the Judicial Magistrate of First Class, Ambalappuzha.
>
> The application is allowed as above.

J.M.JAMES
JUDGE

mrcs

J.M.JAMES, J.

B.A. 4455/2006

DATED THIS THE 18TH DAY OF AUGUST, 2006

O R D E R

The petitioners, accused 2 and 3, in B.A.No.4455/2006, came before this Court, for bail. They were arrested on 18.6.2006, for the offence punishable under Sections 55(a) and 67B of the Abkari Act, as they were found in illegal possession of 105 liters of spirit transported in a car, bearing Registration No. KL-7C/4634, on 18.6.2006 at 6.00 a.m.

2. When the application came up for consideration, it was submitted that the first petitioner, second accused, Rajimon, had to appear for a PSC test, to the post of Male Warden of Jails Department, scheduled on 29.7.2006 at 2.00 p.m., in the Government High School, Sreekariyam, Thiruvananthapuram.

3. After hearing both sides, this Court passed an order dated 28.7.2006 to release him on bail, so that he could appear for the test and thereafter, he was directed to report before the Judicial Magistrate of First Class, Ambalappuzha on 31.7.2006 at 11.00 a.m. That Court was directed to remand the accused to judicial custody.

4. I had posted the bail application for consideration, on 11.8.2006.

5. However, the learned counsel filed a verified petition and submitted that despite the order from this Court, the petitioner was not released in time and therefore, the petitioner could not appear for the PSC test. I, therefore, directed the learned Public Prosecutor to get instructions on the non-release of the petitioner, despite the order of this Court, and posted the case on 16.8.2006. On that day instructions were not available and therefore, the matter was adjourned to today.

6. The report of the Inspector, Kuttanad Excise Range, dated 18.8.2006 is submitted before me. It show the following:-

(a). As per the release order of the Judicial Magistrate of First Class, Ambalappuzha, the petitioner was taken to the examination center, but they did not reach the center in time. Therefore, the petitioner could not appear for the test.

(b). The Sessions case No.80/2006 was pending before the Additional Sessions Court (Ad hoc-I), Kottayam, from where the production warrant of second accused was issued, to produce him on 3.8.2006.

(c). The bail was granted by the Chief Judicial Magistrate Court, Alappuzha, on 29.7.2006 in C.R.No.21/2006. But there was another case pending against him. Therefore, he was not released.

7. It is not clear that after the release order of the Ambalappuzha Magistrate, in accordance with the order dated 28.7.2006 of this Court, how the Chief Judicial Magistrate had passed another order in

C.R.No.21/2006, as the order, dated 28.7.2006 by this court itself, was in C.R.No.21/2006 of Kuttanad Excise Range. The Excise Range Inspector of Kuttanad, did not state which is the another case, pending against second accused, Rajimon.

8. The production warrant issued in S.C.No.80/2006 was to produce only on 3.8.2006, whereas this Court directed the petitioner to surrender on 31.7.2006, before the Ambalappuzha Magistrate Court and directed the learned Magistrate to remand him to jail. Therefore, the production of second accused, Rejimon, on 3.8.2006, would not be a bar in releasing the accused to appear for the PSC test, in time, at 2.00 p.m.

9. From the materials so far produced before me, including the report of Excise Range Inspector of Kuttanad Excise Range, which is not complete in itself, I am of the opinion that a further exhaustive report in the whole matter is necessary. When this Court ordered the petitioner to be released on bail, so as to facilitate him to

appear for the test, conducted by the PSC, on 29.7.2006 at 2.00 p.m., and the release order issued by the Ambalappuzha Magistrate was handed over to the jail authorities in time there should be no reason, why the second accused, Rejimon, was not allowed to appear for the examination in time.

10. In the above facts situation, I direct the Principal Sessions Judge, Alappuzha, to conduct a thorough enquiry on the whole matter, recording the statements of all the concerned persons, scrutinise all the documents, relating to the release of Rejimon available in jail and including the orders passed by the Courts below on 29.7.2006, as reported by the Excise Range Inspector, Kuttanad. The learned Sessions Judge shall file the report within thirty days from the date of receipt of this order.

11. Post this matter on judicial side, immediately on receipt of the report from the Sessions judge.

12. The original report dated 18.8.2006 of Excise Range Inspector, Kuttanad shall be kept in this bail

application. A copy of the same shall be given to the Public Prosecutor.

13. Treat this matter as partly heard.

14. Through separate order, I had allowed the bail application and released the petitioners in B.A.No.4455/2006, granting them bail.

15. Hand over the copy of this order to the learned Public Prosecutor.

16. Send the copies of the following, to the Sessions Judge, Alappuzha:-

(a). The order dated 28.7.2006, in B.A.No. 4455/2006.

(b). The order dated 18.8.2006, in B.A.No.4455/2006, granting bail to the accused 1 and 2.

(c). The order dated 18.8.2006, calling for report from the Sessions Judge, Alappuzha.

(d). The report dated 18.8.2006, of the Inspector of Excise Range, Kuttanad.

J.M.JAMES
JUDGE

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